

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY
05 NOV 17 AM 8:49
CLERK'S OFFICE
WESTERN DISTRICT COURT
OF TENNESSEE
AT NASHVILLE

CHARLES HUDGINS,

Plaintiff,

VS.

No. 05-1276-T/An

TONY PARKER, ET AL.,

Defendants.

ORDER OF DISMISSAL
ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH
AND
NOTICE OF APPELLATE FILING FEE

Plaintiff Charles Hudgins, Tennessee Department of Correction (“TDOC”) prisoner number 371020, an inmate at the Deberry Special Needs Facility (“DSNF”) in Nashville, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983 in the United States District Court for the Middle District of Tennessee on September 13, 2005 in connection with his previous incarceration at the Northwest Correctional Complex (“NWCX”) in Tiptonville, Tennessee. On September 13, 2005, District Judge Todd J. Campbell issued an order assessing the civil filing fee and transferring the case to this district, where it was docketed on September 23, 2005. The Clerk shall record the defendants as NWCX Warden Tony Parker; Amanda Collins, who is identified only as a “PA”; and TDOC Commissioner Quenton White.

I. Analysis of Plaintiff's Claims

The factual allegations of the complaint consist, in their entirety, of the following:

1. Plaintiff is confined to a wheelchair [sic] and has no legs. For a period of several months (i.e., August through November, 2004) I filed numerous Information Requests . . . and two attachments . . . concerning my need for immediate medical intervention as I had developed a large sore on the lower part of my back which subsequently became infected.

2. The defendants demonstrated deliberate indifference when they failed to secure and provide weels [sic] and a seat cushion for petitioner's wheelchair [sic] in a timely manner.

3. Defendants refused to provide Plaintiff with timely and adequate pain relief medication for his serious and painfull [sic] medical condition.

The plaintiff seeks payment of his future medical expenses.

The Sixth Circuit has held that 42 U.S.C. § 1997e(a) requires a federal court to dismiss a complaint without prejudice whenever a prisoner brings a prison conditions claim without demonstrating that he has exhausted his administrative remedies. Brown v. Toombs, 139 F.3d 1102 (6th Cir. 1998); see Porter v. Nussle, 534 U.S. 516, 532 (2002) (“[T]he PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.”); Booth v. Churner, 532 U.S. 731 (2001) (prisoner seeking only money damages must exhaust administrative remedies although damages are unavailable through grievance system). This requirement places an affirmative burden on prisoners of pleading particular facts demonstrating the complete exhaustion of claims. Knuckles El v. Toombs, 215 F.3d 640, 642 (6th Cir. 2000). To comply with the mandates of 42 U.S.C.

§ 1997e(a):

a prisoner must plead his claims with specificity and show that they have been exhausted by attaching a copy of the applicable administrative dispositions to the complaint or, in the absence of written documentation, describe with specificity the administrative proceeding and its outcome.

Knuckles El, 215 F.3d at 642; see also Boyd v. Corrections Corp. of Am., 380 F.3d 989, 985-96 (6th Cir. 2004) (describing the standard for demonstrating exhaustion when prison officials fail to respond in a timely manner to a grievance), *cert. denied*, 125 S. Ct. 1639 (2005); Baxter v. Rose, 305 F.3d 486 (6th Cir. 2002) (prisoner who fails to allege exhaustion adequately may not amend his complaint to avoid a *sua sponte* dismissal); Curry v. Scott, 249 F.3d 493, 503-04 (6th Cir. 2001) (no abuse of discretion for district court to dismiss for failure to exhaust when plaintiffs did not submit documents showing complete exhaustion of their claims or otherwise demonstrate exhaustion). Furthermore, § 1997(e) requires the prisoner to exhaust his administrative remedies before filing suit and, therefore, he cannot exhaust those remedies during the pendency of the action. Freeman v. Francis, 196 F.3d 641, 645 (6th Cir. 1999). Finally, the Sixth Circuit recently held that district courts are required to dismiss a complaint in its entirety, pursuant to 42 U.S.C. § 1997e(a), that contains any unexhausted claims. Jones Bey v. Johnson, 407 F.3d 801, 805-09 (6th Cir. 2005).

In this case, the plaintiff has not satisfied his burden of demonstrating, through particularized averments, that he exhausted his administrative remedies as to his claims. Although the text of the complaint refers to attached grievances, there were no copies of

grievances filed with the complaint. It is, therefore, not possible to confirm that the plaintiff has exhausted each of his claims and that the text of his grievances named each defendant, as required by Moorer v. Price, 83 Fed. Appx. 770, 772 (6th Cir. Dec. 9, 2003) (plaintiff did not exhaust claim against warden because his grievance did not identify the warden or articulate any claim against her), Thomas v. Woolum, 337 F.3d 720, 733-34 (6th Cir. 2003) and Curry, 249 F.3d at 504.

The Sixth Circuit recently stated that “[a] plaintiff who fails to allege exhaustion of administrative remedies through ‘particularized averments’ does not state a claim on which relief may be granted, and his complaint must be dismissed *sua sponte*.¹” Baxter, 305 F.3d at 489. Moreover, pursuant to the recent decision in Jones Bey, a district court must dismiss any complaint that contains unexhausted claims rather than attempting to sever the exhausted claims. Accordingly, the Court DISMISSES the complaint in its entirety, without prejudice, pursuant to 42 U.S.C. § 1997e(a).¹

II. Appeal Issues

The next issue to be addressed is whether plaintiff should be allowed to appeal this decision *in forma pauperis*. Twenty-eight U.S.C. § 1915(a)(3) provides that an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. The good faith standard is an objective one. Coppedge v. United States, 369 U.S.

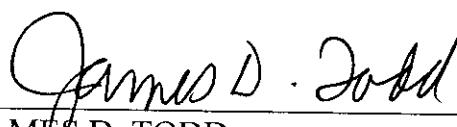
¹ As the Sixth Circuit explained, “If the plaintiff has exhausted his administrative remedies, he may always refile his complaint and plead exhaustion with sufficient detail to meet our heightened pleading requirement, assuming that the relevant statute of limitations has not run.” Baxter, 305 F.3d at 489.

438, 445 (1962). An appeal is not taken in good faith if the issue presented is frivolous. Id. Accordingly, it would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the defendants, yet has sufficient merit to support an appeal *in forma pauperis*. See Williams v. Kullman, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the Court to dismiss this case for failure to state a claim also compel the conclusion that an appeal would not be taken in good faith.

It is therefore CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal in this matter by plaintiff is not taken in good faith.

The final matter to be addressed is the assessment of a filing fee if plaintiff appeals the dismissal of this case.² In McGore v. Wrigglesworth, 114 F.3d 601, 610-11 (6th Cir. 1997), the Sixth Circuit set out specific procedures for implementing the PLRA. Therefore, the plaintiff is instructed that if he wishes to take advantage of the installment procedures for paying the appellate filing fee, he must comply with the procedures set out in McGore and § 1915(a)-(b).

IT IS SO ORDERED this 16th day of November, 2005.

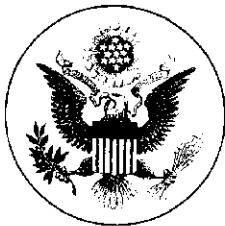


JAMES D. TODD

UNITED STATES DISTRICT JUDGE

² Effective November 1, 2003, the fee for docketing an appeal is \$250. See Judicial Conference Schedule of Fees, ¶ 1, Note following 28 U.S.C. § 1913. Under 28 U.S.C. § 1917, a district court also charges a \$5 fee.

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE



Notice of Distribution

This notice confirms a copy of the document docketed as number 7 in case 1:05-CV-01276 was distributed by fax, mail, or direct printing on November 21, 2005 to the parties listed.

Charles Hudgins
Deberry Special Needs Facility
371020
7575 Cockrill Bend Industrial Prison
Nashville, TN 37209

Honorable James Todd
US DISTRICT COURT